

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

In re:

Circuit City Stores, Inc. et al.,

Debtors.

Chapter 11

Case No. 08-35653 (KRH)

Jointly Administered

**Hearing Date/Time: October 7, 2009  
2:00 p.m. (Eastern Time)**

**CREDITOR SPOKANE COUNTY TREASURER'S RESPONSE TO DEBTORS'  
THIRTY-SEVENTH OMNIBUS OBJECTION TO CLAIMS (REDUCTION OF  
CERTAIN PERSONAL PROPERTY TAX CLAIMS)**

**I. INTRODUCTION**

Creditor Spokane County Treasurer ("Spokane County") files this response to Debtors' Thirty-Seventh Omnibus Objection to Claims (Reduction of Certain Personal Property Tax Claims) (the "Objection"), which was filed on August 24, 2009. The Debtors' objection to Spokane County's claim is without merit, and the Court should allow the claim as filed. The amount of the claim is presumed correct; and the Debtors' generic and factually unsupported objections are insufficient to overcome that presumption.

**II. BACKGROUND**

Spokane County is a municipal corporation, and political subdivision of the State of Washington. In accordance with the provisions of Title 84 of the Revised Code of

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1 Washington, Spokane County assesses ad valorem real and personal property taxes.

2 The Debtors operated two retail stores in Spokane County, Washington located at 15110  
3 E. Indiana and 7701 N. Division.  
4

5 In accordance with Washington law, ad valorem property taxes were assessed in the  
6 amount of \$6,148.23 against the Debtors' personal property located in those stores. These taxes  
7 are reflected in Spokane County's Proof of Claim No. 12322 filed with this court on April 14,  
8 2009.  
9

10 The Debtors seek to reduce the amount of Spokane County's claim to \$4,478.32.

### 11 **III. ARGUMENT**

12 A proof of claim executed and filed in accordance with the Bankruptcy Rules constitutes  
13 prima facie evidence of the validity *and amount* of the claim. BR 3001(f). In addition, under state  
14 law, upon review by any court of a determination of the valuation of property for purposes of  
15 taxation, it shall be presumed that the determination of the public official charged with the duty of  
16 establishing such value is correct. This presumption may only be overcome by clear, cogent and  
17 convincing evidence. RCW 84.40.0301.  
18

19 Therefore, for this Court to order that the amount of Spokane County's claim be reduced,  
20 the Debtors must demonstrate that the claim amount is incorrect and that their asserted amount is  
21 correct.  
22

23  
24 Tellingly, the Debtors offer no admissible evidence in support of the Objection(i.e.—a  
25 declaration from a qualified expert). Instead, the Debtors simply make the conclusory and  
26 factually unsupported assertion that “the Claims are overstated in amount given the value of the  
27 personal property that is the subject of the personal property taxes.” Objection at 6. The  
28

1 Objection contains no store- or property-specific valuation analyses. The Objection apparently  
2 applies equally and without distinction to all 120 claims to which the Debtors are objecting,  
3 suspiciously resulting in a proposed tax reduction of almost exactly 50 percent (from  
4 \$4,600,321.53 to \$2,355.096.95). Objection at 8.

5  
6 If the Debtors had a good-faith belief that Spokane County's administrative-expense  
7 request was improper, they could have *timely* filed an administrative appeal pursuant to state law,  
8 RCW 84.40.038.

9  
10 However, the Debtors, through its agent, Ernst & Young, *untimely* filed a Notice of Appeal  
11 with the Spokane County Board of Equalization pursuant to RCW 84.40.038. See, Exhibit A  
12 hereto.

13 Section 505 of the Bankruptcy Code gives the court authority to determine the tax liability  
14 of the Debtors, but subsection (2)(c) eliminates that authority for:

15  
16 "The amount or legality of any amount arising in connection with any ad valorem  
17 tax on real or personal property of the estate, if the applicable period for contesting  
18 or re-determining that amount under any law (other than a bankruptcy law) has  
19 expired."

20 The Debtors' failure to timely appeal property taxes under applicable state law is  
21 jurisdictional in nature, and bars the bankruptcy court's determination of property taxes. *ANR*  
22 *Rental Corporation v. Dallas County, et al.*, 316 BR 153 (Del. Bkrtcy. 2004)

23 The Debtors have not overcome the presumption that their tax liability is correct. In  
24 fairness to other county taxpayers, the Debtors should not now be allowed to reduce their tax  
25 liability by conclusory and factually unsupported allegations.

26  
27 Additionally, Section 505 indicates that Congress did not intend to set up the bankruptcy  
28 courts as super-assessment tribunals over state taxing agencies. *See, Arkansas Corporation*

1 *Commission v. Thompson*, 313 U.S. 132, 145, 61 S.Ct. 888, 85 L.Ed. 1244 (1941).

2 Both 28 USC §1334(c) and 11 USC §505(a)(1) grant this court the authority to abstain  
3 from hearing a Section 505 proceeding.  
4

5 The court *In re ANC Rental Corporation, supra* adopted a six-factor test for determining  
6 whether to abstain from hearing Section 505 cases: (1) the complexity of the tax issues; (2) the  
7 need to administer the bankruptcy case in an orderly manner; (3) the burden on the bankruptcy  
8 court's docket; (4) length of time required for trial and decision; (5) the asset and liability structure  
9 of the debtor; and (6) the prejudice to the debtor and the potential prejudice to the taxing authority.  
10  
11 *ANC Rental*, 316 B.R. at 159.

12 The Debtors are asking the Court to undertake the fact-intensive re-determination of  
13 property tax liability on multiple properties in numerous states. Each individual case has its own  
14 unique set of facts which will have to be determined by this Court through testimony and  
15 documentary evidence. Each state possesses its own unique laws and methods of assessment,  
16 which this court is obliged to follow. *Grogan v. Garner*, 498 U.S. 279, 283, 111 S.Ct. 654, 112  
17 L.Ed.2d 755 (1991); *see also Cohen v. KB Mezzanine Fund II, LP (In re SubMicron Sys. Corp.)*,  
18 432 F.3d 448, 458 (3d Cir.2006). Obviously, such trials will be lengthy.  
19  
20

21  
22 This time-consuming process will interfere with the Court's ability to orderly administer  
23 and proceed with this bankruptcy.

24 Determination of tax liability in Virginia is unfairly prejudicial to Spokane County, which  
25 would have to retain local counsel and incur substantial travel and litigation expenses. *Id.*  
26

27 Abstention is also mandated based on the compelling local interest in uniformity of  
28 assessment. *ANC Rental Corporation*, 316 B.R. at 159.

1 Finally, bankruptcy courts have rejected the use of a single nationwide appraisal  
2 methodology to determine property taxes in different states as injurious to the concept of  
3 uniformity of taxation. *See, i.e., In re Cable & Wireless USA, Inc.*, 331 B.R. 568, 578(Bankr. Del.  
4 2005).

#### 7 IV. CONCLUSION

8 For the reasons stated above, the Court should overrule the Debtors' objection to Spokane  
9 County's claim and allow the claim as filed.  
10

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**DECLARATION OF SERVICE**

I certify that on September 21, 2009, I served the following Debtor's attorneys by overnight mail postage prepaid with copies of the foregoing Creditor Spokane County Treasurer's Response To Debtors' Thirty-Seventh Omnibus Objection To Claims (Reduction Of Certain Personal Property Tax Claims):

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